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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JAN LASHLEY AND JERRY LASHLEY) No. 05-3288 WHA

Plaintiff,

v.

UNITED STATES OF AMERICA

Defendant.

**STIPULATION FOR COMPROMISE
SETTLEMENT AND RELEASE;
[PROPOSED] ORDER**

IT IS HEREBY STIPULATED BY AND BETWEEN PLAINTIFFS JAN AND JERRY LASHLEY, ON THE ONE HAND, AND DEFENDANT UNITED STATES OF AMERICA, ON THE OTHER HAND, AS FOLLOWS:

1. The parties do hereby agree to settle and compromise the above-entitled action under the terms and conditions set forth herein.
2. The United States of America, defendant, agrees to pay to the plaintiffs the sum of Two Hundred and Fifty Thousand Dollars (\$250,000.00) exactly, which sum shall be in full settlement and satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, arising from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, damage to property and

STIPULATION CONFIRMING SETTLEMENT; [PROPOSED] ORDER
Case No. C 05-3288 WHA

1 the consequences thereof, resulting, and to result, from the same subject matter that gave
2 rise to the above-captioned lawsuit, for which plaintiffs or their heirs, executors,
3 administrators, or assigns, and each of them, now have or may hereafter acquire against
4 the United States of America or its agents, servants, and employees.

- 5 3. Plaintiffs and their heirs, executors, administrators or assigns, and each of them, hereby
6 agree to accept the sum of Two Hundred and Fifty Thousand Dollars (\$250,000.00)
7 exactly in full settlement and satisfaction of any and all claims, demands, rights, and
8 causes of action of whatsoever kind and nature, arising from, and by reason of any and all
9 known and unknown, foreseen and unforeseen bodily and personal injuries, damage to
10 property and the consequences thereof which they may have or hereafter acquire against
11 the United States of America or its agents, servants and employees on account of the
12 same subject matter that gave rise to the above-captioned lawsuit. Plaintiffs and their
13 heirs, executors, administrators or assigns further agree to reimburse, indemnify and hold
14 harmless the United States of America and its agents, servants or employees from any
15 and all such causes of action, claims, liens, rights, or subrogated or contribution interests
16 incident to or resulting from further litigation or the prosecution of claims by plaintiff or
17 his heirs, executors, administrators or assigns against any third party or against the
18 United States of America.
- 19 4. This stipulation for compromise settlement is entered into by all parties for the purpose of
20 compromising disputed claims and avoiding the expenses and risks of litigation. This
21 settlement does not constitute an admission of liability or fault on the part of any party.
- 22 5. This agreement may be pled as a full and complete defense to any subsequent action or
23 other proceeding which arises out of the claims released and discharged by the
24 agreement.
- 25 6. It is also agreed, by and among the parties, that the settlement amount of Two Hundred
26 and Fifty Thousand Dollars (\$250,000.00) exactly, which is to be paid by the United
27 States of America to plaintiffs, represents the entire amount of the compromise settlement
28 and that the respective parties will each bear their own costs, fees, and expenses and that

any attorneys' fees owed by the plaintiffs will be paid out of the settlement amount and not in addition thereto.

7. The settlement amount will be made by a check payable to "Plaintiffs Jan and Jerry Lashley and their attorneys Walkup Melodia Kelly Wecht & Schoenberger." Plaintiffs' counsel shall be responsible for distributing funds to plaintiffs.
8. In consideration of the payment of Two Hundred and Fifty Thousand Dollars (\$250,000.00) exactly and the other terms of this Stipulation and Agreement, as set forth above, plaintiffs agree to immediately upon execution of this agreement, execute the accompanying Stipulation and [Proposed] Order for Dismissal with Prejudice ("dismissal stipulation"), which dismissal stipulation shall dismiss, with prejudice, all claims asserted in This Action or any claims that could have been asserted in this Action, which is captioned *Jan Lashley and Jerry Lashley v. United States of America*, C 05-3288 WHA. Defense counsel will transmit the request for disbursement of the settlement funds from the Department of the Treasury within 48 hours after receiving plaintiffs' and their attorney's signature on the dismissal stipulation. The fully executed Stipulation of Dismissal will be held by counsel for the defendant and will be filed with the Court upon receipt by plaintiff's counsel of the settlement amount and the completion of the settlement terms described herein.
9. Plaintiffs hereby release and forever discharge the United States of America and any and all of its past and present officials, employees, agents, attorneys, their successors and assigns, from any and all obligations, damages, liabilities, actions, causes of actions, claims and demands of any kind and nature whatsoever, whether suspected or unsuspected, at law or in equity, known or unknown, arising out of the allegations set forth in plaintiff's pleadings in this action.
10. The provisions of California Civil Code Section 1542 are set forth below:
"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

11. Plaintiffs, having been apprised of the statutory language of Civil Code Section 1542 by their attorneys, and fully understanding the same, nevertheless elect to waive the benefits of any and all rights they may have pursuant to the provision of that statute and any similar provision of federal law. Plaintiffs understand that, if the facts concerning injuries or liability for damages pertaining thereto are found hereinafter to be other than or different from the facts now believed by them to be true, the Agreement shall be and remain effective notwithstanding such material difference.
12. The parties agree that this stipulation is intended to be a full and final settlement of all claims arising out of the allegations set forth in plaintiff's pleadings in this action. Plaintiffs agree to indemnify and hold harmless defendant United States of America from any and all claims, demands, obligations, liens, and lawsuits brought against the United States of America, its agencies or employees, arising out of the allegations set forth in plaintiffs' complaint in this action.
13. Plaintiffs are informed that payment will be made by the Department of Treasury's Judgment Fund and that such payment is typically made within sixty days of full execution of the settlement agreement and the delivery of a completed Form W-9 (Request for Taxpayer Identification Number and Certification) for each person or entity listed as a payee on the settlement check.
14. This instrument shall constitute the entire agreement between the parties, and it is expressly understood and agreed that the agreement has been freely and voluntarily entered into by the parties hereto with the advice of counsel, who have explained the legal effect of this agreement. The parties further acknowledge that no warranties or representations have been made on any subject other than as set forth in this Agreement. This Agreement may not be altered, modified or otherwise changed in any respect except by writing, duly executed by all of the parties or their authorized representatives.
15. The parties agree that, should any dispute arise with respect to the implementation of the terms of this Agreement, Plaintiffs shall not seek to rescind the Agreement and pursue any of the original causes of action. Plaintiffs' sole remedy in such a dispute is an action

to enforce the Agreement in district court. The parties agree that the district court will retain jurisdiction over this matter for the purposes of resolving any dispute alleging a breach of this Agreement. Jurisdiction will only be retained through January 26, 2007.

16. This stipulation may be signed in counterparts. Each party acknowledges that they have been represented by and have relied upon independent counsel in negotiating, preparing, and entering into this Stipulation and Agreement and that they have had the contents of this Stipulation and Agreement fully explained by counsel and that they are fully aware of and understand all of the terms of the agreement and the legal consequences thereof. It is further acknowledged that the parties have mutually participated in the drafting of this agreement and it is agreed that no provision shall be construed against any party hereto by virtue of the drafting of this Stipulation and Agreement.

17. The parties further agree that the filing of this executed Stipulation and Agreement shall notify the Court of the parties' agreement to vacate all pending discovery, motion hearing dates, settlement or pretrial deadlines or trial date associated with this litigation.

DATED: October 25, 2006

/s/

JAN LASHLEY

Plaintiff

DATED: October 25, 2006

/s/

JERRY LASHLEY

Plaintiff

WALKUP MELODIA KELLY WECHT &
SCHOENBERGER

DATED: October 25, 2006

/s/

DOUGLAS S. SAELTZER

Attorney for Plaintiffs Jan and Jerry Lashley

KEVIN V. RYAN

United States Attorney

DATED: October 25, 2006

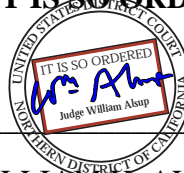
/s/

JONATHAN U. LEE

Attorneys for Defendants

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2 **BASED ON THE FOREGOING STIPULATION, IT IS SO ORDERED:**

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4 DATED: October 27, 2006



5 HON. WILLIAM H. ALSUP

6 United States Magistrate Judge
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